CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF MIKHAYLOVA AND OTHERS v. RUSSIA

(Application no. 22534/02)

JUDGMENT

STRASBOURG

17 November 2005

FINAL

17/02/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mikhaylova and Others v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 25 October 2005,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22534/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Russian nationals, Ms Larisa Ivanovna Mikhaylova, Ms Galina Viktorovna Bukhonova, Ms Tatyana Viktorovna Kaptenok and Ms Tatyana Mikhaylovna Mikhaylova, on 22 January 2002.

2. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. On 7 October 2003 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1960, 1964, 1972 and 1954 respectively and live in Voronezh.

5. The applicants are in receipt of welfare payments for their children. In 1999 – 2001 they brought separate sets of civil proceedings against a local welfare authority, claiming arrears in those payments.

1. The first applicant

6. On 5 October 2000 the Sovetskiy District Court of Voronezh awarded the first applicant 4,295.89 Russian roubles (RUR) against the welfare authority. This judgment entered into force on 16 October 2000.

7. On 9 November 2000 a writ of execution was issued and sent to the bailiffs. It appears that some time later the bailiffs discontinued the enforcement proceedings in respect of the above judgment and returned the writ of execution to the first applicant, as the debtor had insufficient funds.

8. In January – February 2004 the first applicant was paid the amount due pursuant to the writ of execution.

2. The second applicant

9. On 27 December 1999 the Sovetskiy District Court of Voronezh awarded the second applicant RUR 2,221.45 against the welfare authority. This judgment entered into force on 7 January 2000 and a writ of execution was sent to the bailiffs.

10. On 26 July 2001 the bailiffs discontinued the enforcement proceedings in respect of the judgment of 27 December 1999 and returned the writ of execution to the second applicant, referring to the lack of the debtor's funds.

11. In January – February 2004 the second applicant was paid the amount due pursuant to the writ of execution.

3. The third applicant

12. On 30 January and 29 May 2001 the Zheleznodorozhny District Court of Voronezh awarded the third applicant RUR 3,939.15 and 2,550.07 respectively. The judgments entered into force on 12 February and 11 June 2001.

13. On 12 February and 14 June 2001 writs of execution were issued and sent to the bailiffs. It appears that some time later the bailiffs discontinued the enforcement proceedings in respect of the above judgments and returned the writs of execution to her, referring to the lack of the debtor's funds.

14. On 3 September 2001, in reply to the third applicant's complaint about the bailiffs' failure to enforce the judgments in her favour, the Department of Justice of the Voronezh Region informed the applicant that her award would be enforced in the order of priority set out by the Federal Law on Enforcement Procedure.

15. In January – February 2004 the third applicant was paid the amounts due pursuant to the writs of execution.

4. The fourth applicant

16. On 27 October 2000 the Levoberezhny District Court of Voronezh awarded the fourth applicant RUR 5,024.98. The judgment entered into force on 8 November 2000.

17. On 14 November 2000 a writ of execution was issued and sent to the bailiffs. It appears that some time later the bailiffs discontinued the enforcement proceedings in respect of the above judgment and returned the writ of execution to the fourth applicant, as the debtor had insufficient funds.

18. In January – February 2004 the fourth applicant was paid the amount due pursuant to the writ of execution.

II. RELEVANT DOMESTIC LAW

19. Section 9 of the Federal Law on Enforcement Proceedings of 21 July 1997 provides that a bailiff's order on the institution of enforcement proceedings must fix a time-limit for the defendant's voluntary compliance with a writ of execution. The time-limit may not exceed five days. The bailiff must also warn the defendant that coercive action will follow, should the defendant fail to comply with the time-limit.

20. Under Section 13 of the Law, the enforcement proceedings should be completed within two months of the receipt of the writ of enforcement by the bailiff.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCL No. 1 TO THE CONVENTION

21. The applicants complained about the prolonged non-enforcement of the judgments in their favour. The court will examine this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention. These Articles, in so far as relevant, read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

22. The Government informed the Court that the authorities of the Voronezh Region had attempted to secure a friendly settlement of the case and that the applicants had refused to accept the friendly settlement on the terms proposed by the authorities. By reference to this refusal and to the fact that, in any event, the judgments in the applicants' favour had been enforced, the Government invited the Court to strike out the application, in accordance with Article 37 of the Convention.

23. The applicants disagreed with the Government and maintained their complaints. As regards the friendly settlement proposal, the applicants claimed that the calculations presented by the authorities of the Voronezh Region had been incorrect since they had contained no adjustment to the inflation rate and also noted that the respective offer had not covered all their complaints.

24. The Court firstly observes that the parties were unable to agree on the terms of a friendly settlement of the case. The Court recalls that under certain circumstances an application may indeed be struck out of its list of cases under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 76, ECHR 2003-...).

25. On the facts, the Court observes that the Government failed to submit with the Court any formal statement capable of falling into that category and offering a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see, by contrast, to *Akman v. Turkey* (striking out), no. 37453/97, §§ 23-24, ECHR 2001-VI).

26. As regards the Government's argument that the judgments in question have already been enforced, the Court considers that the mere fact that the authorities complied with the judgments after a substantial delay cannot be viewed in this case as automatically depriving the applicants of

their victim status under the Convention. (see, e.g., *Petrushko v. Russia*, no. 36494/02, § 16, 24 February 2005).

27. In the light of the above considerations, the Court rejects the Government's request to strike the application out under Article 37 of the Convention.

28. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

29. The Government advanced no arguments on the merits of the application.

30. The applicants maintained their complaint.

31. The Court observes that the judgments of 27 December 1999, 5 and 27 October 2000, 30 January and 29 May 2001 remained inoperative for about four years and one month, three years and four months, three years and two years and eight months respectively. No justification was advanced by the Government for these delays.

32. The Court has frequently found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases raising issues similar to the ones in the present case (see, among other authorities, *Burdov v. Russia*, no. 59498/00, ECHR 2002-III and, more recently, *Petrushko*, cited above, or *Poznakhirina v. Russia*, no. 25964/02, 24 February 2005).

33. Having examined the material submitted to it, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court finds that by failing for years to comply with the enforceable judgments in the applicants' favour the domestic authorities prevented them from receiving the money they could reasonably have expected to receive.

34. There has accordingly been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The third applicant also complained that the lengthy non-enforcement of the judgments in her favour violated her rights to effective domestic remedies under Article 13 of the Convention.

36. The Court considers that this complaint is linked to the above issues of non-enforcement to such an extent that it should be declared admissible as well. However, having regard to the finding relating to Article 6 § 1 (see

paragraph 34 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

38. The first applicant claimed RUR 129,314.79 in respect of pecuniary damage, of which RUR 75,091.79 was the judgment debt for 2000 – 2004 index-linked to a monthly inflation rate of 30 % and RUR 54,223 was penalty payments at a rate of 1 % per day, and RUR 387,944.37 in respect of non-pecuniary damage. The second applicant claimed RUR 74,751.66 in respect of pecuniary damage, of which RUR 40,541.46 was the judgment debt for 1999 – 2004 index-linked to the monthly inflation rate of 30 % and RUR 34,210.20 was penalty payments at the rate 1 % per day, and RUR 224,254.98 in respect of non-pecuniary damage. The third applicant claimed RUR 177,186.44 in respect of pecuniary damage, of which RUR 105,973.04 was the judgment debt for 2001 – 2004 index-linked to the monthly inflation rate of 30 % and RUR 71,213.40 was penalty payments at the rate 1 % per day, and RUR 531,559.32 in respect of non-pecuniary damage. The fourth applicant claimed RUR 140,691.43 in respect of pecuniary damage, of which RUR 78,741.43 was the judgment debt for 2000 – 2004 index-linked to the monthly inflation rate of 30 % and RUR 61,950 was penalty payments at the rate 1 % per day, and RUR 422,074.29 in respect of non-pecuniary damage.

39. The Government contended that the applicants' claims were wholly excessive and unjustified. They pointed out that, according to the information provided by the Department of Statistics of the Voronezh Region, the average monthly rate of inflation during the reference period was equal to 1.59 % in respect of the first applicant, 1.87 % in respect of the second applicant, 1.51 % in respect of the third applicant and 1.56 % in respect of the fourth applicant. As to the non-pecuniary damage, the Government considered that should the Court find a violation in this case that would in itself constitute sufficient just satisfaction.

40. The Court finds that some pecuniary loss must have been occasioned by reason of the period that elapsed from the time between the entry into force of the judgments in question and their subsequent enforcement (see,

e.g., *Poznakhirina*, cited above, § 34 and *Makarova and others v. Russia*, no. 7023/03, 24 February 2005, § 38). Having regard to the materials in its possession and the Government's arguments, the Court awards the first applicant EUR 80, the second applicant EUR 60, the third applicant EUR 100 and the fourth applicant EUR 95 in respect of pecuniary damage, plus any tax that may be chargeable.

41. As regards the compensation of non-pecuniary damage, the Court would not exclude that the applicants might have suffered distress and frustration resulting from the State authorities' failure to enforce the judgments in their favour. However, having regard to the nature of the breach in this case and making its assessment on an equitable basis, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants (see, in a similar context, *Poznakhirina*, cited above, § 35).

B. Costs and expenses

42. The applicants also claimed each RUR 2,000 for the costs and expenses incurred before the domestic courts and the Court.

43. The Government considered that the documents submitted by the applicants lacked evidence that the applicants had incurred any costs.

44. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award each applicant the sum of EUR 20 in respect of costs and expenses, plus any tax that may be chargeable.

C. Default interest

45. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine the third applicant's complaint under Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 80 (eighty euros) to the first applicant, EUR 60 (sixty euros) to the second applicant, EUR 100 (one hundred euros) to the third applicant and EUR 95 (ninety-five euros) to the fourth applicant in respect of pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 20 (twenty euros) to each of the applicants in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President